

OCT 28 2005

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

SECRETARIAT

2005 OCT 28 P 2:33

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 5607

DATE COMPLAINT FILED: November 8, 2004

DATE OF NOTIFICATION: November 15, 2004

DATE ACTIVATED: August 9, 2005

EXPIRATION OF SOL: October 25, 2009

RR 05L-58

DATE OF REFERRAL: October 5, 2005

DATE ACTIVATED: October 12, 2005

EXPIRATION OF SOL: October 15, 2009

COMPLAINANT: Frank Wolf

RESPONDENTS: James R. Socas
Socas for Congress and
Andrew T. O'Dell, as treasurer

RELEVANT STATUTES: 2 U.S.C. § 434(a)
2 U.S.C. § 434(b)
2 U.S.C. § 441a-1(a)
2 U.S.C. § 441a-1(b)
11 C.F.R. § 104.3(d)
11 C.F.R. § 104.5(f)
11 C.F.R. § 400.2
11 C.F.R. § 400.4
11 C.F.R. § 400.9
11 C.F.R. § 400.20
11 C.F.R. § 400.21
11 C.F.R. § 400.22
11 C.F.R. § 400.23
11 C.F.R. § 400.24
11 C.F.R. § 400.25

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

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I. INTRODUCTION

These related matters primarily concern the failure of Socas for Congress and Andrew T. O'Dell, in his capacity as Treasurer ("the Committee"), and James R. Socas to timely file FEC Form 10 once Socas had passed the threshold for personal funds expenditures in support of his candidacy that potentially made his opponent eligible for increased contribution limits under the Millionaires' Amendment of the Bipartisan Campaign Reform Act ("BCRA"). In addition to the external complaint in MUR 5607 regarding a pre-election Form 10, the Reports Analysis Division also has referred the Committee for its failure to file a post-election Form 10 notifying the Commission that Mr. Socas subsequently spent additional personal funds to support his candidacy, and for the Committee's failure to file a Schedule C or to provide detailed information regarding loans made by Mr. Socas to the Committee.

After a review of the relevant disclosure reports and available information, including the complaint and response, this Office recommends that the Commission find reason to believe that Socas for Congress and Andrew T. O'Dell, in his official capacity as Treasurer, and James R. Socas violated provisions of the Federal Election Campaign Act of 1971, as amended ("the Act") regarding the reporting of personal funds expenditures and loans made by Mr. Socas to the Committee.

II. FACTUAL AND LEGAL ANALYSIS

A. Facts

James R. Socas declared his candidacy for the U.S. House of Representatives for Virginia's Tenth Congressional District by filing FEC Form 2, Statement of Candidacy, with the

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1 Commission on April 13, 2004. FEC Form 2 designated Socas for Congress as the principal
2 campaign committee and indicated that Mr. Socas did not intend to spend any personal funds
3 during the primary or general election over the \$350,000 threshold amount. Mr. Socas was
4 unopposed for the Democratic nomination for the Tenth Congressional District.

5 On April 13, 2004 Mr. Socas made a \$2,000 contribution to the Committee designated for
6 the general election. Mr. Socas made a subsequent contribution of \$33,300 on May 1, 2004, also
7 designated for the general election. On May 15, 2004, Mr. Socas officially secured the
8 Democratic nomination for the Tenth Congressional District of Virginia. After securing the
9 nomination, Mr. Socas made loans to the Committee of \$141,000 on June 29, 2004, \$43,000 on
10 September 29, 2004, \$65,000 on October 12, 2004 and \$62,700 on October 13, 2004. As of
11 October 13, 2004, Mr. Socas' expenditures from personal funds for the general election totaled
12 \$347,000, \$3,000 below the threshold amount for filing a Form 10. These contributions and
13 loans were all disclosed on the Committee's reports to the Commission. However, the
14 Committee did not indicate in its October Quarterly report whether the September 29, 2005 loan
15 was derived from the candidate's personal funds or whether he borrowed the funds from a
16 financial institution.

17 Mr. Socas made a \$150,000 loan to the Committee on October 25, 2004, raising his total
18 expenditures of personal funds with respect to the general election to \$497,000. By spending
19 more than \$350,000 in personal funds, Socas and the Committee were required to file FEC Form
20 10, Notification of Expenditures from Personal Funds, with the Commission and with Mr. Socas'

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opponent, Frank Wolf, within 24 hours of the time the expenditure was made, or by October 26, 2004.

Although the Committee reported the \$150,000 loan by filing FEC Form 6, 48 Hour Notice of Contributions/Loans, on October 27, 2004, the Committee did not submit FEC Form 10 to the Commission and Mr. Socas' opponent in the general election until October 28, 2004, or two days after the Form 10 should have been received.¹ Moreover, it failed to file a Schedule C supporting this loan with its 30-Day Post-General Report.

After the general election, Mr. Socas made another loan to the Committee on November 17, 2004 in the amount of \$24,752. The November 17, 2004 loan is considered to have been made in connection with the November 2004 general election because the loan was used to retire general election debt. No Form 10 was ever submitted to the Commission or to Mr. Socas' opponent in connection with this loan. Moreover, the Committee failed to file a Schedule C supporting this loan in its 30-Day Post-General Report.

The loans made by Mr. Socas to the Committee have been the subject of several requests for additional information from the Reports Analysis Division ("RAD"). On March 17, 2005, RAD asked the Committee whether Mr. Socas used personal funds or borrowed money from a lending institution for the September 27, 2004 loan that was disclosed in the October Quarterly

¹ Complainant alleges that the Form 10 filed by the Committee may have been backdated to October 26, 2004 to provide the appearance of compliance with the regulations. The regulations are clear that the Form 10 must be received by the Commission, each opposing candidate and the national party of each opposing candidate within 24 hours of the time the expenditure is made. 11 C F R. § 400.21(b). The date on the Form 10 itself is irrelevant to whether there is a violation of the Act or regulations. Furthermore, Respondents admit that the Form 10 was not timely filed with the Commission.

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Report. Subsequently, after reviewing the 30-Day Post-General Report which disclosed the October 25, 2004 and November 17, 2004 loans from Mr. Socas to the Committee, RAD requested that the Committee provide a Schedule C for these two loans and clarify whether the loans were from personal funds or from a banking institution. RAD sent another letter to the Committee on July 21, 2005 noting that the Committee had failed to file FEC Form 10 for the November 17, 2004 loan to report receipt of personal funds from the candidate after passing the \$350,000 threshold. Despite repeated attempts by RAD to follow up on these issues, the Committee has not provided any clarification to the Commission regarding the missing Schedules or Form 10, and also has not provided the requested information on the source of the loans.

B. Analysis

The Millionaires' Amendment of the Bipartisan Campaign Reform Act ("BCRA") requires that candidates who make expenditures from personal funds to their campaigns in excess of a specified threshold amount meet special reporting and disclosure requirements.

If a candidate makes an aggregate expenditure of personal funds with respect to an election in excess of \$350,000, the candidate's authorized committee shall file a notification within 24 hours of exceeding the \$350,000 threshold.² See 2 U.S.C. § 441a-1(b)(1)(C);

² An expenditure from personal funds includes direct contributions by the candidate as well as loans made by the candidate using personal funds or loans to the candidate's authorized committee using such funds. See 2 U.S.C. § 441a-1(b)(1)(A); 11 C.F.R. § 400.4. Candidates for the U.S. House of Representatives are required to file a declaration stating the total amount of expenditures from personal funds the candidate intends to make with respect to the election that will exceed \$350,000 within 15 days of becoming a candidate. See 2 U.S.C. § 441a-1(b)(1)(B); 11 C.F.R. §§ 400.20 and 400.9. Declarations of intent for House candidates must be submitted with the Statement of Candidacy, FEC Form 2. See 11 C.F.R. § 400.20 (b)(2). Socas' Statement of Candidacy included the required

1 11 C.F.R. § 400.21(b).³ Once the candidate has exceeded the threshold, notifications are also
2 required for each additional expenditure of \$10,000 or more in connection with the election. *See*
3 2 U.S.C. § 441a-1(b)(1)(D); 11 C.F.R. § 400.22(b). The required notification must be filed with
4 the Commission, with each candidate in the same election and with the national party of each
5 such candidate. *See* 2 U.S.C. § 441a-1(b)(1)(F); 11 C.F.R. §§ 400.21(b) and 400.22(b).
6 Required notifications are filed using FEC Form 10 and must include the date and amount of
7 each expenditure from personal funds since the last notification and the total amount of
8 expenditures from personal funds from the beginning of the election cycle to the date of the
9 expenditure that triggered the notification.⁴ *See* 11 C.F.R. §§ 400.24(b) and 400.23. Candidates
10 are responsible for ensuring that FEC Form 10 is properly filed. *See* 11 C.F.R. § 400.25.

11 Mr. Socas exceeded the \$350,000 threshold for personal expenditures with respect to the
12 general election with his \$150,000 loan to the Committee on October 25, 2004, raising his total

declaration of intent indicating that, as of the date of the statement, Socas did not intend to expend any personal funds for the campaign in excess of the threshold amount.

³ A candidate's personal expenditures could entitle his opponents to a threefold increase in the contribution limit under 2 U.S.C. § 441a(a)(1)(A)) and a waiver of the limits on coordinated party expenditures under 2 U.S.C. § 441a(d). *See* 2 U.S.C. § 441a-1(a)(1); 11 C.F.R. § 400.41. Candidates are entitled to higher limits when the "opposition personal funds amount" exceeds \$350,000. The opposition personal funds amount is distinct from the threshold reporting amount of \$350,000 because it takes into account the personal funds expenditures of the other candidates and, depending on the date of calculation, may also take into account the gross receipts of both candidates. 2 U.S.C. § 441a-1(a)(2); 11 C.F.R. § 400.10. A candidate with a significant "gross receipts advantage" is less likely to qualify for the higher limits. *See* 2 U.S.C. § 441a-1(a)(2)(B)(ii); 11 C.F.R. § 400.10. Similarly, a candidate seeking higher limits may be limited by the amount of personal funds that he or she expended. *See* 11 C.F.R. § 400.10.

⁴ An election cycle runs from the date after most recent election for the specific office to the date of the next election for that office. *See* 11 C.F.R. § 400.2(a). The primary and general election are considered separate election cycles. *See* 11 C.F.R. § 400.2(b).

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1 personal expenditures with respect to the general election from \$347,000 to \$497,000.⁵ Upon
2 reaching the \$350,000 threshold, the Committee was required to file the notification of spending
3 over \$350,000 by October 26, 2004. The Committee did not file FEC Form 10 with the
4 Commission and the general election opponent until October 28, 2004, two days after the
5 deadline. It is unclear whether the Committee also submitted a copy of FEC Form 10 to Wolf's
6 national party at that time.

7 Respondents admit that the Committee did not file FEC Form 10 within 24 hours of
8 crossing the \$350,000 threshold, claiming confusion regarding overlapping filing requirements
9 during the pre-election period. Respondents indicated that the Committee was under the
10 impression that during the 20-day period preceding an election, the 48-hour notice of
11 contributions over \$1,000 took precedence over other filings and that the Committee was not
12 aware that a contribution could be subject to purportedly duplicative filing requirements.

13

⁵ As of October 25, 2004, Mr. Socas had made total personal expenditures with respect to the general election of \$497,000; however, only \$461,700 of these expenditures were made during the general election cycle. Mr. Socas made contributions to the Committee totaling \$35,300 prior to receiving the Democratic nomination for the U.S. Representative from the Tenth Congressional District of Virginia. These contributions were reported as designated for the general election. Commission regulations establish a presumption that contributions are for the next election cycle unless otherwise designated. See 11 C.F.R. § 110.1(b)(2). Similarly, contributions designated for the general election but made during the primary election cycle would appear to constitute expenditures from personal funds for the general election. Any other reading would undermine the reporting requirements of the Millionaires' Amendment. Form 10 would no longer provide a complete accounting of all personal funds expended by a candidate with respect to a particular election. This would impact the determination of whether the opposing candidate would be entitled to increased contributions and coordinated party expenditures since the calculation of the opposition personal funds amount relies on the expenditures of personal funds reported by a candidate on Form 10. This would also impact the proportionality provision since the maximum amount that an opposing candidate can accept under the increased limits is based on the expenditures of personal funds reported on Form 10. See 2 U.S.C. § 441a-1(a)(3)(A)(ii) and 11 CFR § 400.31(e).

1 The Committee's timely reporting of the \$150,000 loan from Mr. Socas under the 48-
2 hour notice provision did not absolve it from compliance with additional reporting requirements,
3 including requirements under BCRA. A candidate's principal campaign committee is required to
4 report within 48 hours any contribution of \$1,000 or more received between the 20th day and 48
5 hours before an election. *See* 2 U.S.C. § 434(a)(6)(A); 11 C.F.R. § 104.5(f). Any suggestion that
6 the law is unclear regarding duplicative filing obligations is contradicted by a reading of the Act.
7 The provision of the Act that provides for the 48-hour notice states that "[t]he notification
8 required under this paragraph shall be in addition to all other reporting requirements under this
9 Act." 2 U.S.C. § 434(a)(6)(E). Furthermore, unlike the Form 10, the 48-hour notice does not
10 include a requirement that the notice be transmitted to the opposing candidate and the national
11 party of the opposing candidate. Lacking this requirement, the 48-hour notice cannot serve the
12 same notification purpose as the Form 10. Therefore, this Office recommends that the
13 Commission find reason to believe that Socas for Congress and Andrew T. O'Dell, in his official
14 capacity as Treasurer, violated 2 U.S.C. § 441a-1(b)(1)(C) and 11 C.F.R. § 400.21(b). Since the
15 statute and regulations require that a candidate ensure that the appropriate filings are made with
16 respect to his expenditure of personal funds, this Office also recommends that the Commission
17 find reason to believe that James R. Socas violated 2 U.S.C. § 441a-1(b)(1)(C) and 11 C.F.R. §
18 400.25.

19 As noted above, the post-election loan of \$24,752 from Mr. Socas to the Committee on
20 November 17, 2004 should also be treated as having been made in connection with the general
21 election. The regulations require that a Form 10 be filed following an additional expenditure of

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1 \$10,000 over the \$350,000 threshold made by the candidate "in connection with the election
2 from the beginning of the election cycle to the date of the expenditure that is the reason for the
3 notification." For the purpose of the Millionaires' Amendment, an election cycle runs from the
4 date after the most recent election for the specific office to the date of the next election for that
5 office with the primary and general elections considered to be separate election cycles. *See*
6 11 C.F.R. § 400.2. An expenditure made after an election, and therefore in a different election
7 cycle, may need to be reported on a Form 10 for the previous election cycle if the expenditure
8 was made with in connection with the preceding election.⁶

9 Because Mr. Socas had already made expenditures of personal funds in excess of the
10 \$350,000 threshold in connection with that election and the November 17, 2004 loan was for
11 expenditure of personal funds over \$10,000, the Committee was obligated to file another FEC
12 Form 10 with the Commission and Mr. Socas' opponent within 24 hours since this would
13 constitute an additional expenditure of \$10,000 or more in excess of the \$350,000 threshold.
14 Therefore, this Office recommends that the Commission find reason to believe that Socas for
15 Congress and Andrew T. O'Dell, in his official capacity as Treasurer, violated 2 U.S.C. § 441a-
16 1(b)(1)(D) and 11 C.F.R. § 400.21(b) and that James R. Socas violated 2 U.S.C. § 441a-
17 1(b)(1)(D) and 11 C.F.R. § 400.25.

18 Additional violations appear to have occurred with respect to the reporting of the
19 September 29, 2004 loan of \$43,000, the October 25, 2004 loan of \$150,000 and the November

1 17, 2004 loan of \$24,752 from Mr. Socas to the Committee. The Act requires a committee to
2 report the name of each person who makes a loan to the committee, any endorser or guarantor of
3 the loan and the date of value of such a loan. *See* 2 U.S.C. § 434(b)(3)(E). Specifically, the
4 regulations require that a committee file a Schedule C for each loan made or received by the
5 committee. *See* 11 C.F.R. § 104.3(d). Despite inquiries from RAD, the Committee has still not
6 filed a Schedule C for either the October 25, 2004 or November 17, 2004 loans or provided
7 information on the source of these two loans. Furthermore, the Committee has still not provided
8 information on the source of the September 29, 2004 loan. This Office, therefore, recommends
9 that the Commission find reason to believe that Socas for Congress and Andrew T. O'Dell, in his
10 official capacity as Treasurer, violated 2 U.S.C. § 434(b)(3)(E) and 11 C.F.R.
11 § 104.3(d).

12 **III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY**

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MURs 5607 and RR 05L-58 (Socas for Congress)
First General Counsel's Report
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IV. RECOMMENDATIONS


1. Open a MUR in connection with RAD Referral 05L-58 and merge into MUR 5607.
2. Find reason to believe that Socas for Congress and Andrew T. O'Dell, in his official capacity as Treasurer, violated 2 U.S.C. § 441a-1(b)(1)(C) and 11 C.F.R. § 400.21(b);
3. Find reason to believe James R. Socas violated 2 U.S.C. § 441a-1(b)(1)(C) and 11 C.F.R. § 400.25;
4. Find reason to believe that that Socas for Congress and Andrew T. O'Dell, in his official capacity as Treasurer, violated 2 U.S.C. § 441a-1(b)(1)(D) and 11 C.F.R. § 400.22(b);
5. Find reason to believe James R. Socas violated 2 U.S.C. § 441a-1(b)(1)(D) and 11 C.F.R. § 400.25;

6. Find reason to believe that that Socas for Congress and Andrew T. O'Dell, in his official capacity as Treasurer, violated 2 U.S.C. § 434(b)(3)(E) and 11 C.F.R. § 104.3(d).
- 7.
8. Approve the attached Factual and Legal Analysis;
- 9.
10. Approve the appropriate letters.

Lawrence H. Norton
General Counsel

Lawrence L. Calvert
Deputy Associate General Counsel
for Enforcement

10/28/05
Date

BY: 
Mark D. Shonkwiler
Assistant General Counsel

Lynn Y. Tran
Attorney

Attachments

1. Factual and Legal Analysis
- 2.

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